

weight of said dietary fat, whereby VLDL catabolism to HDL is facilitated and hepatic clearance of VLDL remnants and LDL is enhanced, and wherein the food source for both said saturated and said polyunsaturated fatty acids comprises a genetically selected or engineered single vegetable oil species.

B3 16 ~~52~~. (New) A method of increasing the HDL concentration and the HDL/LDL concentration ratio in human serum comprising the step of consuming foods prepared using a cholesterol-free single fat or blended fat composition containing a ratio of one part by weight polyunsaturated fatty acids to at least one part by weight saturated fatty acids, wherein said single fat or blended fat composition comprises linoleic acid and at least one saturated fatty acid selected from the group including lauric acid, myristic acid, and palmitic acid, said linoleic acid constituting between 15% by weight and 40% by weight of said composition and said saturated fatty acid constituting between 20% and 40% by weight of said composition, whereby adequate dietary levels of saturated fatty acids in the absence of cholesterol stimulate VLDL synthesis and secretion by the liver, and adequate dietary levels of linoleic acid enhance LPL activity and generation of HDL from VLDL while stimulating the removal of VLDL remnants and LDL and concomitantly decreasing CETP activity and HDL catabolism, and wherein the food source for both said saturated and said polyunsaturated fatty acids comprises a genetically selected or engineered single vegetable oil species.

REMARKS

Applicant appreciates the Examiner's correction of the claim numbering of claims 31-47 (submitted as claims 37-53 in Response filed May 5, 1997. The claim numbering utilized below conforms to the Examiner's correction.

Applicant also greatly appreciates the telephonic interview granted by the Examiner on January 27, 1998. It is Applicant's understanding that the Examiner will withdraw the

rejection under 35 U.S.C. §112, first paragraph, in relation to claims which refer to the genetic engineering of plants as basis in the specification (e.g., at p. 6 lines 13-17, p.12 lines 15-16, and p.19 lines 12-15) was pointed out during that telephonic interview. Claim 34 has been amended to indicate that the fat composition contains no more than 1% elaidic acid or other unnatural *trans* fatty acids by weight, consistent with the specification at p.9 lines 26-27 and original claim 4. The subject matter of prior claim 30 has been incorporated in new claims 48-52.

The cancellation of claims above is intended to be without prejudice to future prosecution. None of those cancellations constitute an admission that any of the canceled subject matter is unpatentable.

Rejections under 35 U.S.C. §112, first paragraph

The Examiner rejected claims 1-6, 23-26, 30-33, 35-38, 40-45, and 46-47 under 35 U.S.C. §112, first paragraph, as allegedly containing subject matter which was not adequately described in the specification. The Examiner asserted that the following three items constituted new matter: (1) reference to the AHA Step I diet; (2) reference to the genetic engineering of plants; and (3) prepared food products. Applicant respectfully traverses this rejection with respect to the references to prepared foods.

With respect to the references to the AHA Step I diet, Applicant believes that the relationship to the Step I diet was properly laid out in the annex to the priority application and therefore does not constitute new matter. However, in order to facilitate prosecution, Applicant has amended and canceled claims to delete that reference.

With respect to the reference to genetic engineering of plants, as indicated above basis for this was pointed out in the specification and the telephonic interview on January 27, 1998. It is Applicants understanding that the Examiner will withdraw this rejection and therefore this matter is not further discussed. As indicated above, the subject matter of prior claim 30 has been incorporated in new claims 48-52.

With respect to prepared food products, as was discussed in the interview of January 27, 1998 basis for prepared food is provided in the specification at page 18 lines 10-14 (and at p.30 line 28 to p.31 line 2) which indicates that the described fat blends can be used in a variety of prepared foods including in shortening for baked prepared foods such as cakes, pies, cookies, and crackers; in dairy products, including in frozen desserts, creams, cheeses, and spreads; and in blended food products such as salad dressing, margerines, and mayonaisse. For such uses, these described fat blends can be used in a conventional manner for preparing these food products. Thus, those skilled in the art do not require further guidance as the preparation of these products is well known to those skilled in the art. As the specification need not describe and preferably omits that which is well known in the art, there is no need to provide preparation details for these prepared foods in the specification. Consequently, in accord with established law the specification has properly described the claimed prepared food products.

In view of the above discussion, Applicant respectfully requests that the Examiner reconsider and withdraw the above rejections under 35 U.S.C. §112, second paragraph.

The Examiner also rejected claims 10-12, 20-22, and 39 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. The Examiner asserted that the claims contain improper Markush groups and stated that an amendment changing the term "including" to "consisting of" would overcome the rejection. Claims 1-12 and 20-22 were canceled above. Claim 39 did not use the term "including", but did use the term "providing" in connection with the Markush group. Claim 39 has been amended above. Therefore, Applicant requests that the Examiner withdraw this rejection.

Rejections under 35 U.S.C. §101-Double Patenting Rejection

The Examiner rejected claims 1-12, 15-17, and 20-28 under 35 U.S.C. §101 as allegedly claiming the same invention of that of claims 1-29 of U.S. Patent 5,578,332.

The claims rejected for alleged double patenting have been canceled above. In view of those cancellations, Applicant requests that the Examiner withdraw this rejection.

Objection under 37 CFR §1.75(c)

The Examiner objected to claim 29 asserting that the claim was of improper dependent form for failing to further limit the subject matter of a previous claim. In order to facilitate the allowance of the claims of this application, Applicant has canceled claim 29 above.

In view of the above amendments and discussion, Applicant submits that the claims are now in condition for allowance and respectfully requests a notice to that effect.

Applicant hereby requests a three month extension of time to allow timely filing of a response up to and including May 26, 1998. A petition requesting a 3 month extension of time accompanies this response. No additional fee is believed due in connection with this communication, however, if any fee is due, kindly charge the appropriate amount to Deposit Account 12-2475.

Respectfully submitted,

LYON & LYON LLP

By Wesley B. Ames
Wesley B. Ames
Reg. No. 40,893

First Interstate World Center
633 West Fifth Street, 47th Floor
Los Angeles, CA 90071-2066
619-552-8400